

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2010-091812

02/23/2011

HONORABLE HELENE ABRAMS

CLERK OF THE COURT

K. Depue

Deputy

IN RE THE MARRIAGE OF
VERONICA HAYNES

MARLON E BRANHAM

AND

MATT HAYNES

WENDELL G WILSON JR.

DOCKET-FAMILY COURT-SE
FAMILY COURT SERVICES-CCC

DECREE OF DISSOLUTION

The Trial in this matter was conducted on February 17, 2011. During the proceedings, the Court heard from the witnesses, including the parties. The Court has since considered the evidence, including the demeanor of the witnesses, reviewed the exhibits as well as the case history, and considered the parties' arguments.

After significant deliberation, the Court makes the following findings and enters the following orders:

THE COURT FINDS as follows:

- A. At the time this action was commenced at least one of the parties was domiciled in the State of Arizona and that said domicile had been maintained for at least 90 days prior to the filing of the Petition for Dissolution of Marriage.
- B. The conciliation provisions of A.R.S. § 25-381.09 have either been met or do not apply.
- C. The parties were married on November 14, 1992. By operation of law, the marital community is deemed to have terminated on May 27, 2010.

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- D. The marriage is irretrievably broken and there is no reasonable prospect for reconciliation.
- E. There are two minor children, common to the parties, namely: Zakery (DOB: 10/23/96) and Willow (DOB: 08/04/07).
- F. Mother is not pregnant.
- G. This was not a covenant marriage.
- H. To the extent that it has jurisdiction to do so, the court has considered, approved and made provision for the maintenance of either spouse and the division of property and debts.

Based on the above,

DISSOLUTION OF MARRIAGE

IT IS ORDERED dissolving the marriage of the parties and restoring each party to the status of a single person.

CUSTODY AND PARENTING TIME

Jurisdictional Findings

THE COURT FINDS that the parties have two minor children in common: Zakery (DOB: 10/23/96) and Willow (DOB: 08/04/07). The parties and the minor children have resided in Arizona continuously for at least the six months preceding the filing of the petition for dissolution. This Court, therefore, has jurisdiction as Arizona is the “home state” of the minor children. *See* A.R.S. § 25- 1031.

Best Interest Findings: A.R.S. § 25-403

The Court has considered the agreement of the parties and the factors under A.R.S. § 25-403. The parties have stipulated to a finding that the agreed upon plan is in the best interests of the minor children.

THE COURT FURTHER FINDS that there is no history of domestic violence (A.R.S. § 25-403(E) and 25-403.03), any drug related offenses of either party (A.R.S. § 25-403.04) and any sexual offenses (A.R.S. § 25-403.05) sufficient to preclude the award of joint legal custody as agreed.

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Legal Custody

Based upon the foregoing and in accordance with the best interests of the minor children,

THE COURT FURTHER FINDS that it is in children's best interest that Mother and Father be awarded joint legal custody of Zakery (DOB: 10/23/96) and Willow (DOB: 08/04/07).

IT IS THEREFORE ORDERED awarding Mother and Father joint legal custody of Zakery (DOB: 10/23/96) and Willow (DOB: 08/04/07).

Custody Terms

Parental Access To Records And Information- Both parents are entitled to have equal access to documents and other information concerning each child's education and physical, mental, moral and emotional health including medical, school, police, court and other records directly from the custodian of the records or from the other parent. A person who does not comply with a reasonable request shall reimburse the requesting parent for court costs and attorney fees incurred by that parent to force compliance with this subsection. A parent who attempts to restrict the release of documents or information by the custodian, without a prior court order, is subject to appropriate legal sanctions.

Educational Arrangements- Both parents have the right to participate in school conferences, events, and activities (including extra-curricular), and the right to consult with teachers and other school personnel.

Medical And Dental Arrangements- Both parents have the right to authorize emergency medical/dental treatment, if needed, and the right to consult with physicians and other medical practitioners. Both parents shall advise the other parent immediately of any emergency medical/dental care sought for each child, to cooperate on health matters pertaining to each child and to keep one another reasonably informed regarding the status of each child's health. Both parents shall keep each other informed as to names, addresses, and telephone numbers of all medical/dental care practitioners.

Parental Communication- It is in the furtherance of each child's best interests for the parents to confer and for the views of each parent to be considered. There shall be communication between the parents to address day-to-day and more significant issues. The parents shall develop their communication by utilizing e-mail as their primary method for communication. This shall afford a method that ensures both accountability and verifiability. Both parties shall maintain and regularly review their e-mail accounts. They shall each respond in a timely fashion, even if such response is merely to acknowledge the receipt of information.

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Each should print copies of all e-mails received and sent so that if an issue arises in the future that has been addressed through e-mail, each party shall have proof as to what was communicated.

Relocation- Neither parent shall relocate the residence of the children outside of the state of Arizona or to a distance greater than 100 miles from the current residential locations unless that parent first secures the written consent of the other or secures a court order authorizing the move.

Decision Making Authority- It is anticipated that parental decisions shall be required for major issues in raising the children and in meeting on-going needs. If/when they arise, the parents shall address the issues. Each shall give good faith consideration to the views of the other and put forth best efforts to reach a consensus decision. If the decision involves medical or schooling issues, the parties may further elect to seek input from treating physicians or educators. Both parents shall be provided with such input. If they cannot agree, Mother will have final decision authority regarding Willow. Father will have final decision authority regarding Zakery.

Parenting Time

As a term of the overall custody orders, parenting time shall be exercised as follows:

Regular Access- The parenting time shall be a 5-2-2-5 plan. Mother requested equal time. There is no indication that one additional day with Father will be in the children's best interest or assist in impacting school tardiness, homework or friends. There is no reason to split the children up for one day. It is easier and more consistent to keep the children together.

Holiday Schedule- The Holiday Schedule shall be split equally between the parties.

Summer/Vacation- Use the same schedule and allow up to 2 consecutive weeks for the parents to each take children for vacation with 30 days notice.

CHILD SUPPORT

For child support purposes, the Court makes the following findings:

Father's Income:	\$17.00 an hour
Mother's Income:	\$85,000 a year
Adjustments to Mother's Income:	\$560.00
Health Insurance Paid by Mother	\$250.00

In applying these findings under the Arizona Child Support Guidelines,

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IT IS THEREFORE ORDERED that Mother shall pay to Father as and for child support the sum of **\$79.46** per month, payable through the Support Payment Clearinghouse on the 1st day of each month commencing **June 1, 2010** by Wage Assignment.

LET THE RECORD REFLECT that an Order of Assignment is initiated electronically by the above-named deputy clerk.

Until the wage assignment becomes effective, it is the responsibility of the party obligated to pay child support to pay the support to **Support Payment Clearinghouse, P. O. Box 52107, Phoenix, Arizona 85072-2107**. The payment should show the case number and/or ATLAS case number and the name of the party paying support and the name of the party who will receive the payment.

If payments are made directly to the person who is to receive the support, the payments may be considered a gift and no credit will be given towards the support obligation.

Any change in the paying party's employment and any change in the residential address of either party **must** be submitted to the Clerk's Office, in writing, within ten (10) days of the change (A.R.S. 25-322(C)). Failure to notify the Clerk's Office of any change may be considered contempt of Court.

All obligations for child support for each child shall terminate upon a finding of this Court that the child has attained the age of 18 years, or is otherwise emancipated. If any child attains the age of 18 years while attending high school, support shall continue to be provided during the period in which that child is actually attending high school but only until the child reaches 19 years of age. Support for special needs children may continue past the age of 18 based on a finding of this Court. Provisions for health insurance and non-insured health expenses for the children, as provided for below, shall be deemed to be additional child support and shall be enforceable as such.

Pursuant to A.R.S. § 25-503.I, the right of a parent, guardian or custodian to receive child support payments as provided in this Order vests as each installment falls due. Each vested child support installment is enforceable as a final judgment by operation of law.

Insurance and Unreimbursed Medical Expenses

IT IS FURTHER ORDERED that Mother shall provide medical insurance for the benefit of the parties' minor child, and shall provide an insurance card and claim filing information/forms to

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the other parent. All medical, dental and orthodontia expenses incurred for the health and protection of the child not covered by insurance shall be paid **30% by Father and 70% by Mother.**

With regard to unreimbursed medical, dental, and vision expenses,

IT IS ORDERED that except for good cause shown, any request for payment or reimbursement of uninsured medical, dental and/or vision costs must be provided to the other parent within 180 days after the date the services occur. The parent responsible for payment or reimbursement must pay his or her share, as ordered by the Court, or make acceptable payment arrangements with the provider or person entitled to reimbursement within 45 days after receipt of the request.

Both parents should use their best efforts to obtain services that are covered by the insurance. A parent who is entitled to receive reimbursement from the other parent for medical costs not covered by insurance shall, upon request of the other parent, provide receipts or other evidence of payments actually made.

Tax Deduction For The Dependents

IT IS ORDERED that the parties may claim the eligible dependent as follows: Each party shall take one child but alternate which child per year.

IT IS FURTHER ORDERED that if Mother is not current in the total Court-ordered child support obligation for the current calendar year and/or any Court-ordered arrearage payment due during the calendar year for which the exemption is to be claimed but nevertheless claims the children for tax purposes, Mother shall pay directly to the Support Payment Clearinghouse 100 percent of any and all tax refunds that she receives, which shall be applied first towards Mother's current child support obligation, and then towards any arrearage.

Exchange Of Income Information

IT IS FURTHER ORDERED that the parties shall exchange income information on every 24 months. Said financial information shall include, but not be limited to: personal tax returns with all schedules, affidavits of financial information, earning statements and other such documentation necessary to establish or prove the income of either party. In addition, at the time of the exchange of financial information, the parties shall also exchange residential addresses and the names and addresses of their respective employers.

SPOUSAL MAINTENANCE

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Neither party has asked for spousal maintenance under A.R.S. § 25-319(A).

Therefore,

IT IS ORDERED that neither Father nor Mother is awarded spousal maintenance.

DIVISION OF PROPERTY AND DEBTS

Community/Sole and Separate Property Claims and Debts

In a proceeding for dissolution of marriage, the court shall divide any disputed property in accordance with the property's character. Property is characterized by the time of its acquisition. If acquired by either spouse before marriage or acquired during marriage by gift, devise, or descent, property is characterized as separate property. A.R.S. § 25-213(A). Under Arizona law, the court shall assign each spouse's sole and separate property to that spouse. A.R.S. § 25-318(A).

If acquired by either spouse during marriage, property is characterized as community property (with the exceptions of property acquired by gift, devise, or descent). A.R.S. § 25-211(A). There is a presumption that any property acquired by either spouse during marriage is community property, unless demonstrated otherwise by clear and convincing evidence. *See Sommerfield v. Sommerfield*, 121 Ariz. 575, 578, 592 P.2d 771, 774 (1979). Moreover, any property acquired by either spouse outside of Arizona shall be deemed to be community property if such property would have been characterized as community property had it been initially acquired in Arizona. A.R.S. § 25-318(A).

Equitable Division

Under Arizona law, the court shall divide community property equitably, although not necessarily in kind, without any regard to marital misconduct. A.R.S. § 25-318(A). As a general presumption, equitable division requires that community property be divided substantially equally. *See Toth v. Toth*, 190 Ariz. 218, 221, 946 P.2d 900, 903 (1997). However, the court may order an unequal division of community property in consideration of excessive or abnormal expenditures or the destruction, concealment, or fraudulent disposition of property. A.R.S. § 25-318(C).

When dividing property, the court may consider all related debts and obligations. A.R.S. § 25-318(B). To determine property's value, the court shall select a valuation date. The selection of this valuation date rests within the wide discretion of the trial court and shall be tested upon review by the fairness of the result. *See Sample v. Sample*, 152 Ariz. 239, 242-43,

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731 P.2d 604, 607-08 (Ct. App. 1986).

After considering all equitable factors,

THE COURT FURTHER FINDS that this case does not present a unique set of facts or circumstances. Therefore an unequal division of community property is inappropriate to achieve equity.

Based on the above,

Real Property

THE COURT FINDS that the parties owned a house at 2095 S 173rd Dr. Goodyear, AZ 85338 (the marital residence) as community real property.

IT IS ORDERED that Father may continue to reside in the home. He must refinance the home within two years from the decree date and remove Mother's name from the mortgage. He must remain current on all mortgage payments and maintain the home. If the home is not refinanced and Mother's name is not removed within two years, the home will be sold.

Personal Property

IT IS ORDERED that Mother does have certain property at the marital residence which Father has agreed to allow her to pick up.

Subject to the above,

IT IS ORDERED awarding to Father as his sole and separate property, subject to any liens or encumbrances on the property, all vehicles, household furniture, furnishings and appliances, and other personal property currently in his possession.

IT IS FURTHER ORDERED awarding to Mother as her sole and separate property, subject to any liens or encumbrances on the property, all vehicles, household furniture, furnishings and appliances, and other personal property currently in her possession.

Retirement Accounts

THE COURT FINDS that Mother is awarded her 401(k) through her employment at Banner, as her sole and separate property.

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Debts

IT IS ORDERED that Mother will assume and pay any and all credit cards in her name and she will hold Father harmless from any liability for these cards. Father is aware of the three (3) credit cards in Mother's name.

IT IS FURTHER ORDERED that Mother will assume and pay all school loans she has incurred and she will hold Father harmless from any liability. Mother has one (1) credit card at Bank of America and one (1) credit card at Chase. Mother also has student loans with a balance of approximately \$20,000.00.

IT IS FURTHER ORDERED that Father will assume and pay any and all credit cards in his name and he will hold Mother harmless from any liability for these cards. Father has three (3) credit cards in his name; two (2) at Chase and one (1) at Bank of America.

IT IS FURTHER ORDERED as follows:

- Father shall be solely responsible for any credit card or debt in his name incurred after service of the Complaint.
- Mother shall be solely responsible for any credit card or debt in her sole name incurred after service of the Complaint.
- Any community debts that were not identified at the time of the trial shall be divided equally between the parties.
- Each party shall pay any debt incurred by him or her respectively since the date of service of the Complaint in this matter.
- Each party shall indemnify and hold harmless from any and all debts designated as the responsibility of that party by the terms set forth in this Decree.

Equalization

THE COURT FINDS that the above allocation of the real and personal property, when considered with the division of debt is fair and equitable under the circumstances and that no further adjustments are necessary.

ATTORNEY FEES AND COSTS

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Both parties have requested an award of attorney fees and costs. An award of attorney fees and costs is governed by A.R.S. § 25-324. Section 25-324 provides as follows:

A. The court from time to time, after considering the financial resources of both parties and the reasonableness of the positions each party has taken throughout the proceedings, may order a party to pay a reasonable amount to the other party for the costs and expenses of maintaining or defending any proceeding under this chapter or chapter 4, article 1 of this title. On request of a party or another court of competent jurisdiction, the court shall make specific findings concerning the portions of any award of fees and expenses that are based on consideration of financial resources and that are based on consideration of reasonableness of positions. The court may make these findings before, during or after the issuance of a fee award.

B. For the purpose of this section, costs and expenses may include attorney fees, deposition costs and other reasonable expenses as the court finds necessary to the full and proper presentation of the action, including any appeal.

C. The court may order all amounts paid directly to the attorney, who may enforce the order in the attorney's name with the same force and effect, and in the same manner, as if the order had been made on behalf of any party to the action.

Upon consideration of the foregoing,

THE COURT FINDS that there is substantial disparity of financial resources between the parties.

THE COURT FURTHER FINDS that neither party acted unreasonably in the litigation.

Accordingly,

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IT IS ORDERED denying the parties request for attorney fees and costs.

FILED: Exhibit Worksheet

IT IS FURTHER ORDERED signing this minute entry as a formal order of this Court pursuant to Rule 81, Arizona Rules of Family Law Procedure.

/ s / HON. HELENE ABRAMS

HONORABLE HELENE ABRAMS
JUDICIAL OFFICER OF THE SUPERIOR COURT

All parties representing themselves must keep the Court updated with address changes. A form may be downloaded at: <http://www.superiorcourt.maricopa.gov/SuperiorCourt/Self-ServiceCenter>.